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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,432	10/22/2001	Henry P. Glass		5272
7590	10/10/2003		EXAMINER	
Frank Frisenda, Jr. Frisenda, Quinton & Nicholson Suite 470 3993 Howard Hughes Parkway Las Vegas, NV 89109			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	
			DATE MAILED: 10/10/2003	

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/016,432	GLASS, HENRY P.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Josiah C. Cocks	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on amendment filed 7/29/03 .

2a)  This action is FINAL.                  2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-3,5-7 and 9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-3, 5-7, and 9 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## **Application Papers**

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.  
4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Receipt of applicant's amendment filed 7/29/03 is acknowledged.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Glass* (US # 3,455,291) in view of *Grady* (US # 5,836,298).

*Glass* discloses in Figures 1-7 a freestanding firepit comprising a base support member (12a-d), a generally funnel shaped base element (56) containing a bottom grate (14) adapted to hold fuel and having apertures (16) for ash to fall through (see col. 3, lines 5-7), a middle grate (42 and 60) having a cooking grill surface and mounted to pivot about an access of rotation (see Figs. 2 and 7), an ash receptacle containing a remove drawer (see col. 2, lines 30-42).

*Glass* does not disclose a meshed screen disposed on a peripheral portion of the base element, the meshed screen having an access opening and an access door.

*Grady* teaches a portable fireplace of similar endeavor having a meshed screen (320) surrounding a peripheral portion of a base element wherein the screen has an access opening and an access door (330).

In regard claim 1, when the firepit of *Glass* is modified to incorporate the meshed screen and access opening of *Grady* the grate of *Glass* would be arranged to pivot about an axis of rotation adjacent and contiguous to the access opening of *Grady*.

Therefore, in regard to claims 1-3 and 5-7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firepit of *Glass* to incorporate the meshed screen and door or *Grady* for the desirable purpose of preventing the escape of burning embers from the firepit (see *Grady*, col. 7, lines 33-37) and to allow direct access to the interior of the enclosure formed by the surrounding meshed screen through the side to reduce the likelihood of the occurrence of burns to a user of the firepit (see *Grady*, col. 7, lines 57-64).

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Glass* in view of *Grady* as applied to claim 1 above, and further in view of *Fort* (US # 3,111,123).

*Glass* in view of *Grady* teaches all the limitations of claim 9 except possibly that the pivot assembly is composed of a post having a collar for receiving a complimentary pin.

*Fort* teaches a pivotal fireplace grill wherein the pivot assembly of the grill (11) includes a post (30) with a collar (32) with a space for receiving a pin (31) of a shaft (20) of the grill. It has been held that the mere reversal of parts is an obvious modification and not patentably distinct (see MPEP § 2144.04(VI)(A)). In this case, to have reversed the locations of the space

and the pin of the fort such that the collar were to include the pin, would have been an obvious reversal of parts as the pivoting function of the grill would not be affected.

Therefore, in regard to claim 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the firepit of *Glass* to incorporate the pivot assembly means of *Fort* as this pivot assembly means permits easy rotation of the entire grill portion (see *Fort*, col. 2, lines 49-53).

#### ***Response to Arguments***

5. Applicant's arguments filed 7/29/03 have been fully considered but they are not persuasive. Applicant contends that *Glass* does not disclose a meshed screen enclosure. However, as noted in item 3 above, the examiner acknowledges the lack of a meshed screen enclosure in *Glass*. To remedy this deficiency the examiner relies on *Grady*, which teaches a fireplace having a meshed screen enclosure. Applicant further contends that *Grady* shows a grill screen panel that is removed by sliding and not by rotation. However, the examiner has not relied upon *Grady* for a teaching of a rotating grill screen panel. As noted in item 3 above, *Glass* is the primary reference in the rejection applied under 35 U.S.C. § 103(a) and shows a pivoted grill surface (42). Applicant appears to be arguing against the references individually, however, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (703) 305-0450. The examiner can normally be reached on weekdays from 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (703) 308-1935. The fax phone numbers for this Group are (703) 308-7764 for regular communications and (703) 305-3463 for After Final communications.

Application/Control Number: 10/016,432  
Art Unit: 3749

Page 6

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

jcc  
October 8, 2003

  
JOSIAH COCKS  
PATENT EXAMINER  
ART UNIT 3749